

These supervisors, a head supervisor, the night supervisor and the personnel director, make regular daily visits to the various locations, including Anheuser-Busch and Krueger.

Since 1952 the Employer has had bargaining agreements with Special Police Guards Union, Local 23318, AFL, covering all the guards employed by the Employer in the State of New Jersey.³ Although the contracts contained dues checkoff provisions applicable to all guards, by special arrangement between the Employer and Local 23318 only the guards at three locations, i. e., Anheuser-Busch Brewing, Krueger Brewing Company, and Givaudan Corporation, have in fact been subject to checkoff of dues. In support of its position, the Petitioner cites this special arrangement on establishing the appropriateness of a bargaining unit consisting of Anheuser-Busch and Krueger. We do not agree.

In view of the bargaining history on a Statewide basis, the extent of interchange of guards between plants, the relative uniformity of employment conditions, the centralization of personnel handling, and the common supervision, we find in accord with the Employer's contention, that all the Employer's guards in the State of New Jersey constitute the appropriate unit. As the Petitioner has not presented a sufficient showing of interest in such a unit, we shall dismiss the petition.

[The Board dismissed the petition.]

³ Special Police Guards Union, Local 23318, AFL, did not intervene. It was served with notice of hearing.

The Zeller Corporation and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, AFL-CIO, Petitioner. *Case No. 8-RC-2516. March 12, 1956*

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

On August 18, 1955, pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted, under the direction of the Regional Director for the Eighth Region. Upon conclusion of the election, a tally of ballots was furnished the parties in accordance with the Rules and Regulations of the Board. The tally shows that of about 369 eligible voters, 359 cast ballots of which 258 were against, and 85 for the Petitioner, 14 voted challenged ballots and 2 ballots were void. The challenged ballots are insufficient in number to affect the results of the election.

On August 23, 1955, the Petitioner filed timely objections to conduct affecting the election. In accordance with Board Rules and Regula-

tions, the Regional Director conducted an investigation of the objections and, on November 23, 1955, issued his report on objections, in which he found that the objections were without merit and recommended that they be overruled. Thereafter the Petitioner filed timely exceptions to the report on objections.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9 (b) of the Act: All production and maintenance employees of the Employer at its Defiance, Ohio, plant, including tool- and die-makers, but excluding office and clerical employees, professional employees, cafeteria employees, watchmen, guards, and supervisors as defined in the Act.

Objections

Objection 1: In this objection the Petitioner alleged that Harold H. Rulman, who was the election observer for the Employer, was a supervisor. In his report the Regional Director found that Rulman was not a supervisor nor a managerial employee. The Petitioner excepts to this finding.

The uncontroverted facts show that Rulman, a salaried employee of the Employer's personnel department, is employed as paymaster and interviewer. He computes the pay for the employees from the data appearing on the time cards and from such computations prepares the paychecks. Along with Rulman, there are two girls working as payroll clerks all of whom are under the supervision of the personnel manager. Rulman also works on the Employer's insurance plan. In this connection he compiles information about employees such as marital status, number of dependents, ages, and related information. In addition to the foregoing duties, Rulman initially interviews applicants for employment and reviews the forms prepared by the applicants to insure that all pertinent information is recorded. If, at the time an application is made, there are job vacancies for which the applicant appears to be qualified, Rulman refers the applicant to the personnel manager for further consideration. When there is no job opening or the applicant does not have the qualifications for the vacancy, Rulman files the application without referring the applicant to the personnel manager. Rulman has no authority to take or recommend personnel action. Another duty of Rulman's is to make Em-

ployer loans to employees. If the amount of the requested loan exceeds \$50, the application must be referred to the personnel manager for approval. The making of a loan of \$50 or less is not within Rulman's discretion. He must either make the loan or, where it appears that the applicant may not be a satisfactory risk, refer the matter to the personnel director for consideration.

We agree with the Regional Director's conclusion that Rulman's job, the duties of which are described above, does not come within the definition of a supervisor, as defined in the Act, nor do they fall within the scope of a managerial employee. Rulman was, therefore, eligible to act as an observer.¹

Objection 2: In this objection, the Petitioner alleged that on August 15, 1955, 3 days before the election, the Employer held a foremen's meeting on company time and property to which some employees were invited and attended without loss of pay; that during the meeting free dinner and beverages were served, and that also the employees were promised benefits. The Regional Director found no merit in this objection. The Petitioner excepts to the finding.

The uncontradicted facts show that a free dinner was given, 3 days before the election in the Employer's cafeteria and attended by a number of employees who were invited by the foremen as their guests. At the dinner, the Employer's president made a speech in which he left no doubt that he did not want a union in the plant. There are, however, no facts, whatsoever, in this case that show that the Employer made promises of benefits to the employees at the dinner or that the employees attended the dinner on company time. We cannot presume otherwise.

It is clear that the timing of the dinner meeting, 3 days before the election, did not violate the rule in the *Peerless Plywood Company* case² which forbids campaign speeches on company time during the 24-hour period immediately preceding the election. That rule prohibits only one form of activity by the parties within the 24-hour period³ and has no application to conduct outside such period. As stated in the *Peerless Plywood* case:

This rule will not interfere with the rights of unions or employees to circulate campaign literature on or off the premises at any time prior to an election, *nor will it prohibit the use of any other legitimate campaign propaganda or media.* It does not, of course, sanction coercive speeches or other conduct prior to the 24 hour period, *nor does it prohibit an employer from making (without granting the union an opportunity to reply) campaign speeches*

¹ See *Westinghouse Corporation*, 91 NLRB 955, 959. The case of *Herbert Men's Shop Corporation*, 100 NLRB 670, principally relied on by the Petitioner is clearly distinguishable on its facts.

² 107 NLRB 427.

³ *Comfort Slipper Corporation*, 112 NLRB 183.

on company time prior to the 24-hour period, provided, of course, such speeches are not otherwise violative of Section 8 (a) (1). Moreover, the rule does not prohibit employers or unions from making campaign speeches on or off company premises during the 24-hour period if employee attendance is voluntary and on the employees' own time. [Emphasis supplied.]

With respect to free dinners and beverages, the Board has recently held that such conduct, *per se*, is legitimate campaign media during an election campaign.⁴ We conclude, therefore, that in the instant case there was nothing improper in the Employer furnishing the employees a free dinner and beverages. Concerning the Petitioner's allegation that the employees attended the dinner on company time, there are, as noted above, no facts to support such allegation. But even assuming there were, since the dinner was held more than 24 hours before the election, clearly such conduct is not prohibited during an election campaign.⁵

Because there are no facts that indicate that the Employer's dinner speech contained promises of benefits, threats or reprisals, and in view of the foregoing, we agree with the Regional Director that the entire conduct surrounding the dinner of August 15 was privileged under Section 8 (c) of the Act.

Objection 3: In this objection, the Petitioner alleged that the Employer permitted antiunion publications to be posted on the Employer's bulletin board while at the same time, denying such privilege to the Petitioner. The Regional Director found no merit in this objection. The Petitioner excepts to the finding.

The Employer's personnel manager stated, in his affidavit, without contradiction, that at various times he saw antiunion publications or handbills on the bulletin board, that he had no knowledge who posted them or how long they remained posted, that no request was ever made by the Petitioner to use the bulletin board for posting union literature, and that the day before the election he personally cleared the bulletin board of all antiunion literature.

Because the Petitioner has offered no facts to support its allegations, we must agree with the Regional Director that the objection is without merit.

Objection 4: This objection alleged that the Employer, by letters to its employees on four different occasions, distributed false and misleading information concerning the effect on the employees if the Petitioner won the election. The Regional Director found no merit in this objection. The Petitioner excepts to this finding.

(a) *The August 4, 1955, letter:* This letter, in general, informed the employees about a meeting held among representatives of the Em-

⁴ *Ohmite Manufacturing Company*, 111 NLRB 888.

⁵ See the above excerpt from the *Peerless Plywood* case.

ployer, representatives of the Petitioner, and a representative of the Board to determine the eligible list for the election. In addition, the letter contained the following:

If I may do so at this time, I would like to take this opportunity to point out that if the majority of those who vote decide for the Union then all of you, whether you vote or not, will be represented by the Union on all matters pertaining to wages, working conditions and working relations with the Company.

The August 4 letter, including the above, appears to be informative and factual. Moreover, at the most the contents of the letter were a mere expression of the Employer's opinion and argument and electioneering propaganda privileged under Section 8 (c) of the Act.⁶ Accordingly, we agree with the Regional Director that the August 4 letter was not objectionable.

(b) *The letter of August 9, 1955:* This letter contained, among enclosures, a letter of inquiry from Whirlpool Corporation, a customer of the Employer, which requested information about the Employer's labor relations and the Employer's reply to Whirlpool.

The Petitioner contends that the letter of August 9 together with the enclosures was distributed to the employees for the purpose of convincing the employees that if they voted for the Petitioner, the Employer would lose Whirlpool as a customer and therefore under such circumstances the use of this correspondence constituted an implied threat that if the employees voted for the Petitioner, some of them would be laid off. The letter to the employees is set forth as follows:

Although our reputation for not having a union is generally known and considered noteworthy by the customers with whom we have enjoyed doing business for many years, we occasionally receive an inquiry from a customer similar to the attached letter.

Since this letter along with our reply illustrates how the absence of a union can be an advantage to us, I am passing it on to you so that there will be no misunderstanding regarding this matter.

You will note that the buyer is anxious to learn whether we have a union or not and if so, the expiration date of the contract, etc. From this it is quite apparent that he intends to classify his suppliers into two groups;

(1) Suppliers who have a union and for whom he will probably have to maintain a second source of supply in order to be assured of an uninterrupted flow of material in the event of a strike or other possible labor strife.

and (2) Suppliers who do not have a union due to their excellent employer-employee relations which assures him of

⁶ See *L. G. Everist, Inc.*, 112 NLRB 810.

uninterrupted delivery of parts since strikes or other labor difficulties are not likely to occur in non-union plants.

Obviously this buyer endeavors to place his orders with the suppliers in Group 2 (Companies with no union such as ourselves), and since you or I would probably do the same if we were in his position, you can readily see how we can retain customers and secure new business without the presence of a union.

We do not believe that such letter alone, or considered together with its enclosures, the letter of inquiry from Whirlpool, and the Employer's letter of reply to Whirlpool, conveys a threat of economic reprisal in the event the Petitioner should win the election, nor that it interfered with the employees' freedom of selecting or not selecting a bargaining representative. Contrary to the opinion of our dissenting colleagues, we see no basis whatever for their conclusion that the Employer's letter was a "factual misrepresentation of material proportions" where as here, the Employer enclosed in the letter to its employees, a copy of the letter from Whirlpool, thereby permitting the employees to judge for themselves the accuracy of the Employer's statements.⁷ Moreover, unlike our dissenting colleagues, we do not read the Employer's letter as stating that if the Union came in the Employer would *lose* business. On the contrary, we construe the Employer's letter to state only that the Employer did not *need* the Union to retain customers and secure new business. Such a statement which contained no threat to the jobs of the employees, was clearly privileged.⁸

(c) *The letter of August 12, 1955:* This letter was a description of the Employer's improved group insurance plan for its employees. The Regional Director found nothing objectionable to the letter. The Petitioner excepts to this finding.

This letter, as noted above, was confined to a description of the Employer's improved group insurance plan. It is uncontradicted that this improved insurance plan had been announced on July 1, 1955, before the petition was filed in this case. The letter advised the employees of the details of the plan. As the employees knew about the improved plan generally before the petition was filed herein and before the election campaign began, we are of the opinion, as was the Regional Director, that the Employer's announcement regarding the details of the plan in the August 12 letter did not render unlikely the employees' free choice in the election.⁹

(d) *The August 15, 1955, letter:* The Petitioner contends that this letter contained threats, promises of benefits, and was also misleading.

⁷ See *R. H. Osbrink Manufacturing Company*, 114 NLRB 940.

⁸ *La Porte Machine Tool Company*, 113 NLRB 171, and cases cited therein.

⁹ *Texas Prudential Insurance Co.*, 111 NLRB 802

The Regional Director found no merit in these contentions. The Petitioner excepts to these findings.

In the August 15 letter the Employer announced that the time for the election was near and that he believed it was his duty to point out just what was at stake. The letter stated that every employee was free to join or not to join a union, that it was important that every employee vote in the election whether or not they were in favor of the union, that the company had never made promises for purposes of influencing its employees' decisions and that they should not be influenced by promises made by others, that the employer-employee relationship had been pleasant, informal, and mutually beneficial, and that it preferred to continue such relationship, and that the welfare of the employees under a union would depend entirely upon the collective bargaining by the union representative. The letter concluded with the following paragraph:

While theoretically the Union will be your bargaining agent and subject to your control, actually and in practice, the Union controls the workers for whom it bargains. It will be the Union and not you who will determine your wages, your hours of employment, your conditions of employment, when you shall strike, when, where and for what you shall picket, and what dues, what fines and what assessments you shall pay.

We are of the opinion that there is nothing in this letter which amounts to threats or promises of benefits to its employees concerning their participation in the election. We think the letter clearly negates such conduct. Further, we think it clear that there are no statements contained in the letter which are sufficiently misleading as to have interfered with the freedom of choice of the employees in casting their ballots in the election. We find, as did the Regional Director, that the August 19 letter was merely an expression of the Employer's opinion, argument, and electioneering propaganda privileged under Section 8 (c) of the Act.¹⁰

Objection 5: This objection is a general allegation that the Employer engaged in conduct, other than that complained of in the four objections discussed above, which interfered with the election. Because the Petitioner offered no evidence to support such allegation, the Regional Director found no merit in the objection. The Petitioner excepts to this finding. As there is no evidence whatsoever to support the objection, we find, as did the Regional Director, that the objection is without merit.

Because we have found no merit in the Petitioner's objections, they are hereby overruled, and as no basis exists for directing a hearing on the issues raised by the Petitioner, its request for such a hearing is

¹⁰ See *L. G. Everist, Inc.*, footnote 5, *supra*.

hereby denied. Accordingly, as the Petitioner failed to receive a majority of the ballots cast in the election, we shall certify the results of the election.

[The Board certified that a majority of the valid ballots was not cast for International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, AFL-CIO, and that the said organization is not the exclusive representative of the Employer's employees in the appropriate unit.]

MEMBERS MURDOCK and PETERSON, dissenting:

Objection 4 (b) furnishes sufficient ground, in our opinion, to set aside the election. For a proper consideration of this objection, it is necessary to examine in juxtaposition two letters sent shortly before the scheduled election, the first of which does not appear in the majority opinion:

(1) The following letter, dated July 29, 1955, was received by the Employer from its customer, Whirlpool:

ZELLER CORPORATION
Fort Wayne Road
Defiance, Ohio

GENTLEMEN: In order that we may keep abreast of present day labor conditions concerning our vendors, we would appreciate receiving the following information from you:

- (1) Name of your union and affiliation, if any.
- (2) Expiration date of contract, or details regarding conditions and time contract negotiations can be reopened.
- (3) History of your labor organizations, i. e., how many strikes you have had in the past, etc.

Also, in the event you anticipate a strike or any labor trouble which might interfere with our receiving a continual flow of material from your plant, we would appreciate receiving prompt information from you concerning same.

Your usual cooperation will be appreciated.

Yours very truly,

WHIRLPOOL CORPORATION
CLYDE DIVISION
R. W. CASEY, *Buyer*.

(2) On August 9, 1955, the Employer distributed to the employees the following letter:

Although our reputation for not having a union is generally known and considered noteworthy by the customers with whom we have enjoyed doing business for many years, *we occasionally*

receive an inquiry from a customer similar to the attached letter. [Whirlpool's July 29 letter.]

Since this letter along with our reply illustrates how the absence of a union can be an advantage to us, I am passing it on to you so that there will be no misunderstanding regarding this matter.

You will note that the buyer is anxious to learn whether we have a union or not and if so, the expiration date of the contract, etc. From this *it is quite apparent that he intends to classify his suppliers into two groups:*

(1) Suppliers who have a union and for whom he will probably have to maintain a second source of supply in order to be assured of an uninterrupted flow of material in the event of a strike or other possible labor strife.

and (2) Suppliers who do not have a union due to their excellent employer-employee relations which assures him of uninterrupted delivery of parts since strikes or other labor difficulties are not likely to occur in non-union plants.

Obviously this buyer endeavors to place his orders with the suppliers in Group 2 (Companies with no union such as ourselves), and since you or I would probably do the same if we were in his position, you can readily see how we can retain customers and secure new business without the presence of a union. [Emphasis added.]

It is evident that there is nothing in the Whirlpool letter to justify the Employer's statement to the employees that Whirlpool endeavors to place its business with nonunion suppliers such as the Employer. On its face, Whirlpool's letter seems merely a routine inquiry to ascertain expiration dates and reopening provisions of labor contracts of Whirlpool suppliers. It appears to take for granted that these suppliers do have collective-bargaining representatives and contracts, rather than the contrary. We further note from Board records that Whirlpool itself, in the recent past, has recognized and contracted with unions representing its employees. Whirlpool was undoubtedly known to the employees as a principal or important customer of the Employer. Moreover, Whirlpool's letter, coupled with the interpretation the Employer placed thereon, was explicitly presented by the Employer as illustrative of the attitude of other of its customers as well. Thus, as obviously intended, the Employer's August 9 letter to its employees notified them that its customer, Whirlpool, and other customers, preferred doing business with nonunion suppliers, and implied that if the employees voted for the Union in the scheduled Board election, the Employer would lose the business of Whirlpool and other customers, thereby jeopardizing the jobs of these employees. As we regard the August 9 letter, therefore, it appears

to us at the minimum to have been a misrepresentation of material proportions, no less flagrant than such as the Board has previously held sufficient to set aside an election.¹¹ Nor is such misrepresentation cured or nullified, as the majority suggests, because the Employer enclosed a copy of Whirlpool's letter, "thereby permitting the employees to judge for themselves the accuracy of the Employer's statements." It does not at all detract from the effectiveness of the misrepresentation that the Employer attached Whirlpool's letter for the employees themselves to read. Nor is it material that the Employer prefaced its interpretation of Whirlpool's letter with such terms as "obviously" and "you can readily see." As between the Employer and its employees, the policies of the Employer's customers are subjects peculiarly within the sphere of knowledge of the Employer. The accurate facts are presumptively either known or easily obtainable by the Employer. The employees are thus necessarily in the position of accepting on faith the Employer's statements concerning matters which affect its relations with its customers. Plainly, the ability of the employees to evaluate the Whirlpool letter was so impaired by the Employer's misrepresentation thereof and their uncoerced desires cannot be determined in the election.¹²

The majority's construction of the Employer's letter as stating "*only* that the Employer did not *need* the Union to retain customers and secure new business," rather than that "if the Union came in the Employer would lose business," necessarily ignores the plain language to reach an unreal and far-fetched interpretation. It is difficult to conceive how the Employer could more clearly imply that selection of the Union would result in a loss of business than by stating as it did that: (1) Whirlpool "endeavors to place his orders with suppliers in Group 2 (Companies with no union such as ourselves)," rather than with those in Group 1, "Suppliers who have a union. . . ."; and (2) the employees can thus "readily see how we can retain customers. . . . without the presence of a union." We cannot believe that the Employer's employees could be so naive as to think that the Employer was telling them "only that the Employer did not *need* the Union to retain customers" and get new business.

We cannot agree, as our colleagues have decided, that the technique used by the Employer in its preelection letter of August 9 can fairly be sanctioned simply on the ground that it was an expression of an opinion, and therefore privileged. For, as plainly appears, the August 9 letter conveyed more than mere "views, argument, or opinion":¹³ its message carried a powerful threat to the employees'

¹¹ See *The Gummed Products Company*, 112 NLRB 1092, wherein the union, in a handbill to the employees before the election, misrepresented the wage rates being paid under a contract it had covering another plant in the area.

¹² See *Merck & Company*, 104 NLRB 891; *Gong Bell Manufacturing Co.*, 114 NLRB 342.

¹³ Section 8 (c).

jobs if the Union were successful in the election. That the threatened repercussions for voting a union into the plant were to be precipitated by the Employer's customers, rather than by the Employer, did not serve to neutralize the repressive character of the Employer's letter, nor alleviate its coercive impact on the employees. It is obvious that there can be no more serious type of interference with a free election than a threat that the selection of a union may result in a loss of employment. The difference in effect, if any, between the situation where the threat is that the employer himself will take action to jeopardize employment and that where, as here, the threat is that the customers will cause a loss of jobs by taking away business, if a union is selected, is one of degree only. We cannot believe that the law contemplates that an employer is privileged to misrepresent to his employees that he will lose the business of his principal customer with a resulting loss of jobs if they select a union, in order to defeat a union in an election. To hold that such conduct is privileged is to hand a powerful weapon to unscrupulous employers by which to defeat the free choice of collective-bargaining representatives.

The Employer's letter having injected a substantial coercive element into the election contest, thereby seriously impairing the free choice of the employees, consistent with existing precedent¹⁴ the election should be set aside.

¹⁴ *The Falmouth Company*, 114 NLRB 896; *New York Shipping Association and Its Members*, 108 NLRB 135; *The Diamond State Poultry Co., Inc.*, 107 NLRB 3; *United Aircraft Corp.*, 103 NLRB 102.

International Chemical Workers Union, AFL-CIO, and Its Local No. 467 and James D. Pendergrass, Charging Party. Case No. 13-CB-316. March 13, 1956

DECISION AND ORDER

On January 12, 1956, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had not engaged in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report together with a supporting brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the